

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JANE ROE, et al.)	Case No. 1:22-cv-00376
)	
Plaintiffs,)	Judge Jeffrey P. Hopkins
)	
v.)	Magistrate Judge Karen L. Litkovitz
)	
UNIVERSITY OF CINCINNATI,)	
)	
Defendant.)	

**DEFENDANT UNIVERSITY OF CINCINNATI'S RESPONSE TO
PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs have filed a Notice of Supplemental Authority (Doc. 27) stating that the Sixth Circuit's opinion in *S.C. v. Metro. Gov't of Nashville*, No. 22-5125, 2023 WL 7644306 (6th Cir. Nov. 15, 2023) "reaffirmed the court's prior decision recognizing the validity of 'before' deliberate indifference claims," and, that "[s]uch 'before' claims are viable even where the plaintiff was not the prior victim of sexual harassment." This is immaterial to UC's Motion to Dismiss in that UC has not contested the validity of Title IX "before" claims in principle. Rather, UC's position is that Plaintiffs fail to state a Title IX "before" claim for which relief can be granted because their Amended Complaint fails "to allege that UC maintained a *policy* of deliberate indifference to reports of sexual misconduct or that a heightened risk of sexual harassment was known or obvious." See UC's Reply Br. to Motion to Dismiss (Doc. 22) at 9-10 (emphasis added) (quoting *Doe v. Metro. Govt. & Davidson Cty.*, 35 F.4th 459, 465 (6th Cir. 2022)). Nothing in *S.C.* cures this defect or the others raised in UC's Motion to Dismiss.

S.C. does, however, confirm that, in the event Plaintiffs' claims are not dismissed in their entirety, they are barred from recovering emotional distress damages by *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022). *S.C.*, 2023 WL 7644306 at *7.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically on November 22, 2023. Notice was sent by operation of the Court's electronic filing system to all other counsel who have entered an appearance and any parties who have entered an appearance through counsel. The parties may access this filing through the Court's ECF system.

/s/ Michael H. Carpenter

Michael H. Carpenter

Trial Attorney for
Defendant University of Cincinnati